

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 40

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2009**

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO SCHOOLS IN NEED OF IMPROVEMENT; ALLOWING A LOCAL SCHOOL BOARD TO SUSPEND ITS SALARY SCHEDULE AND CONTRACT PROVISIONS FOR LICENSED SCHOOL EMPLOYEES AT ANY SCHOOL THAT HAS FAILED TO MAKE ADEQUATE YEARLY PROGRESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-2C-7 NMSA 1978 (being Laws 2003, Chapter 153, Section 16, as amended) is amended to read:

"22-2C-7. ADEQUATE YEARLY PROGRESS--SCHOOL IMPROVEMENT PLANS--CORRECTIVE ACTION--RESTRUCTURING.--

A. A public school that fails to make adequate yearly progress for two consecutive school years shall be identified as a school in need of improvement. A school in need of improvement shall be ranked as:

- (1) school improvement 1;

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

- 1 (2) school improvement 2;
- 2 (3) corrective action;
- 3 (4) restructuring 1; or
- 4 (5) restructuring 2.

5 B. Within ninety days of being notified that a  
6 public school within the school district has been identified as  
7 a public school in need of improvement, the school district  
8 shall submit an improvement plan for that public school to the  
9 department. In developing the improvement plan, the local  
10 superintendent, the president of the local school board and the  
11 school principal of the public school in need of improvement  
12 shall hold a public meeting to inform parents and the public of  
13 the public school's rank. The meeting shall be used to elicit  
14 suggestions from parents and the public on how to improve the  
15 public school. After the public meeting, the school district  
16 shall develop the public school's improvement plan, and the  
17 local school board shall approve the improvement plan before it  
18 is submitted to the department. The improvement plan shall be  
19 approved by the department within thirty days of its  
20 submission.

21 C. The improvement plan shall include:

22 (1) documentation of performance measures in  
23 which the public school failed to make adequate yearly  
24 progress;

25 (2) measurable objectives to indicate the

.179730.1

underscored material = new  
[bracketed material] = delete

1 action that will be taken to address failed measures;

2 (3) benchmarks to be used to indicate progress  
3 in meeting academic content and performance standards;

4 (4) an estimate of the time and the resources  
5 needed to achieve each objective in the improvement plan;

6 (5) the support services that shall be  
7 provided to students;

8 (6) applications that have been made for  
9 federal and state funds; and

10 (7) any other information that the public  
11 school that needs improvement, the local superintendent, the  
12 local school board or the department deems necessary.

13 D. The improvement plan may include a declaration  
14 by the local school board that it is suspending the school  
15 district's salary schedule and tenure rights for the school  
16 employees of that school.

17 [~~D.~~] E. A public school in need of improvement may  
18 apply to the department for financial or other assistance in  
19 accordance with the improvement plan. The public school shall  
20 make application for assistance substantially in the form  
21 required by the department. The department shall evaluate  
22 applications for assistance and may recommend changes to an  
23 application or to an improvement plan if warranted by the final  
24 application. The department shall consider innovative methods  
25 to assist the public school in meeting its improvement plan,

.179730.1

underscored material = new  
[bracketed material] = delete

1 including department or other school employees serving as a  
2 mobile assistance team to provide administrative, classroom,  
3 human resource and other assistance to the public school that  
4 needs improvement as needed and as provided in applications  
5 approved by the department.

6 ~~[E-]~~ F. If a public school has failed to make  
7 adequate yearly progress for two consecutive school years, it  
8 shall be placed in school improvement 1 and shall provide  
9 transportation or pay the cost of transportation, within  
10 available funds, for students who choose to enroll in a higher  
11 ranked public school.

12 ~~[F-]~~ G. If a public school has failed to make  
13 adequate yearly progress for three consecutive school years, it  
14 shall be placed in school improvement 2 and shall provide  
15 supplemental services, including after-school programs,  
16 tutoring and summer services to its Title I-eligible students,  
17 within available funds.

18 ~~[G-]~~ H. The department shall adopt rules that  
19 govern the priority for students for whom supplemental services  
20 shall be provided and for students for whom transportation  
21 costs are paid. The rules shall include the adoption of a  
22 sliding-fee schedule based on the educational level of tutors  
23 in New Mexico and require that providers use a pre- and post-  
24 assessment instrument approved by the department to measure the  
25 gains that students achieve through supplemental services.

.179730.1

underscored material = new  
[bracketed material] = delete

1           ~~[H.]~~ I. If a public school has failed to make  
2 adequate yearly progress for four consecutive school years, it  
3 shall be placed in corrective action and the school district,  
4 in conjunction with the department, shall take one or more of  
5 the following actions in addition to earlier improvements:

- 6                   (1) replace staff as allowed by law;
- 7                   (2) implement a new curriculum;
- 8                   (3) decrease management authority of the  
9 public school;
- 10                  (4) appoint an outside expert to advise the  
11 public school;
- 12                  (5) extend the school day or year; or
- 13                  (6) change the public school's internal  
14 organizational structure.

15           ~~[H.]~~ J. If a public school has failed to make  
16 adequate yearly progress for five consecutive school years, it  
17 shall be placed in restructuring 1 and shall continue the  
18 improvement measures implemented pursuant to Subsections B  
19 through ~~[H]~~ I of this section and begin planning for  
20 restructuring of the public school if it fails to make adequate  
21 yearly progress in the sixth year.

22           ~~[J.]~~ K. If a public school has failed to make  
23 adequate yearly progress for six consecutive years, it shall be  
24 placed in restructuring 2. The school district, in conjunction  
25 with the department, shall take one or more of the following

.179730.1

underscored material = new  
[bracketed material] = delete

1 actions in addition to other improvements:

2 (1) recommend reopening the public school as a  
3 state-chartered charter school as provided in Section 22-2C-7.1  
4 NMSA 1978;

5 (2) replace all or most of the staff as  
6 allowed by law;

7 (3) turn over the management of the public  
8 school to the department; or

9 (4) make other governance changes.

10 [~~K.~~] L. A school district that has failed to make  
11 adequate yearly progress for two consecutive school years may  
12 be subject to the same requirements as a public school subject  
13 to corrective action, as determined by the department. A  
14 school district that fails to make adequate yearly progress for  
15 four consecutive school years shall be subject to corrective  
16 action.

17 [~~L.~~] M. The state, a school district or a charter  
18 school shall not enter into management contracts with private  
19 entities for the management of a public school or a school  
20 district subject to corrective action.

21 [~~M.~~] N. If a public school that is identified as a  
22 school in need of improvement makes adequate yearly progress in  
23 the year that it has been placed in school improvement 1,  
24 school improvement 2, corrective action or restructuring 1, it  
25 shall not move to the next school improvement rank for one

.179730.1

underscored material = new  
[bracketed material] = delete

1 year. If the public school makes adequate yearly progress for  
2 a second consecutive year, it shall be removed from the ranks  
3 of schools in need of improvement.

4 ~~[N-]~~ O. Nothing in this section shall be construed  
5 to restrict the powers and duties of the secretary or the  
6 department under the Public School Code."

7 Section 2. Section 22-10A-24 NMSA 1978 (being Laws 1986,  
8 Chapter 33, Section 22, as amended) is amended to read:

9 "22-10A-24. TERMINATION DECISIONS--LOCAL SCHOOL  
10 BOARD--GOVERNING AUTHORITY OF A STATE AGENCY--PROCEDURES.--

11 A. Except as provided in Section 22-2C-7 NMSA 1978,  
12 a local school board or governing authority of a state agency  
13 may terminate an employee with fewer than three years of  
14 consecutive service for any reason it deems sufficient. Upon  
15 request of the employee, the local superintendent or state  
16 agency administrator shall provide written reasons for the  
17 decision to terminate. The reasons shall be provided within  
18 ten working days of the request. The reasons shall not be  
19 publicly disclosed by the superintendent, administrator, local  
20 school board or governing authority. The reasons shall not  
21 provide a basis for contesting the decision under the School  
22 Personnel Act.

23 B. Before terminating a noncertified school  
24 employee, the local school board or governing authority shall  
25 serve the employee with a written notice of termination.

.179730.1

underscoring material = new  
[bracketed material] = delete

1           C. An employee who has been employed by a school  
2 district or state agency for three consecutive years and who  
3 receives a notice of termination pursuant to either Section  
4 ~~[22-10-12]~~ 22-10A-22 NMSA 1978 or this section may request an  
5 opportunity to make a statement to the local school board or  
6 governing authority on the decision to terminate ~~[him]~~ the  
7 employee by submitting a written request to the local  
8 superintendent or state agency administrator within five  
9 working days from the date written notice of termination is  
10 served upon ~~[him]~~ the employee. The employee may also request  
11 in writing the reasons for the termination action ~~[to terminate~~  
12 ~~him]~~. The local superintendent or state agency administrator  
13 shall provide written reasons for the notice of termination to  
14 the employee within five working days from the date the written  
15 request for a meeting and the written request for the reasons  
16 were received by the local superintendent or administrator.  
17 Neither the local superintendent or administrator nor the local  
18 school board or governing authority shall publicly disclose its  
19 reasons for termination.

20           D. A local school board or governing authority may  
21 not terminate an employee who has been employed by a school  
22 district or state agency for three consecutive years without  
23 just cause.

24           E. The employee's request pursuant to Subsection C  
25 of this section shall be granted if ~~[he]~~ the employee responds

.179730.1

underscored material = new  
[bracketed material] = delete

1 to the local superintendent's or state agency administrator's  
2 written reasons as provided in Subsection C of this section by  
3 submitting in writing to the local superintendent or  
4 administrator a contention that the decision to terminate [~~him~~]  
5 was made without just cause. The written contention shall  
6 specify the grounds on which it is contended that the decision  
7 was without just cause and shall include a statement of the  
8 facts that the employee believes support [~~his~~] the employee's  
9 contention. This written statement shall be submitted within  
10 ten working days from the date the employee receives the  
11 written reasons from the local superintendent or administrator.  
12 The submission of this statement constitutes a representation  
13 on the part of the employee that [~~he~~] the employee can support  
14 [~~his~~] the employee's contentions and an acknowledgment that the  
15 local school board or governing authority may offer the causes  
16 for its decision and any relevant data in its possession in  
17 rebuttal of [~~his~~] the employee's contentions.

18 F. A local school board or governing authority  
19 shall meet to hear the employee's statement in no less than  
20 five or more than fifteen working days after the local school  
21 board or governing authority receives the statement. The  
22 hearing shall be conducted informally in accordance with the  
23 provisions of the Open Meetings Act. The employee and the  
24 local superintendent or state agency administrator may each be  
25 accompanied by a person of [~~his~~] the employee's and the

.179730.1

underscoring material = new  
[bracketed material] = delete

1 superintendent's or administrator's choice. First, the  
2 superintendent shall present the factual basis for [~~his~~] the  
3 determination that just cause exists for the termination of the  
4 employee, limited to those reasons provided to the employee  
5 pursuant to Subsection C of this section. Then, the employee  
6 shall present [~~his~~] the employee's contentions, limited to  
7 those grounds specified in Subsection E of this section. The  
8 local school board or governing authority may offer such  
9 rebuttal testimony as it deems relevant. All witnesses may be  
10 questioned by the local school board or governing authority,  
11 the employee or [~~his~~] the employee's representative and the  
12 local superintendent or administrator or [~~his~~] the  
13 superintendent's or administrator's representative. The local  
14 school board or governing authority may consider only such  
15 evidence as is presented at the hearing and need consider only  
16 such evidence as it considers reliable. No record shall be  
17 made of the proceeding. The local school board or governing  
18 authority shall notify the employee and the local  
19 superintendent or administrator of its decision in writing  
20 within five working days from the conclusion of the meeting."